

OGC 7-1812

30 October 1957

MEMORANDUM FOR: Deputy Director (Plans)
Deputy Director (Intelligence)
General Counsel
Director of Security

STA

SUBJECT: Amendment of Executive Order No. 10501
of November 5, 1953, Relating to Safeguarding
Official Information in the Interests of the
Defense of the United States

1. The Bureau of the Budget has forwarded for Agency comment a proposed Amendment of Executive Order 10501. The letter from the Bureau of the Budget also included a proposed Memorandum for the Heads of All Departments and Agencies and a letter from the Attorney General to the Bureau of the Budget dated 11 October 1957, both relating to Executive Order 10501.

2. In order for this Office to consolidate Agency views, it is requested that your office furnish comments or suggestions to the undersigned prior to 14 November 1957.

SIGNED

JOHN S. WARNER
Legislative Counsel

Attachments - 3

cc: Deputy Director (Support)

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

OCT 29 1957

My dear Mr. Director:

In accordance with the provisions of Executive Order No. 10006, relating to proposed Executive Orders and Proclamations, the Director of the Bureau of the Budget has received the following papers (copies attached):


- Letter from the Attorney General dated October 11, 1957,
- 3 Amendment of Executive Order No. 10501 of November 5, 1953,
Relating to Safeguarding Official Information in the
Interests of the Defense of the United States, and
- Memorandum for the Heads of All Departments and Agencies
of the Government.

The Director of the Bureau of the Budget would appreciate receiving an expression of your views with respect to this matter.

Very truly yours,

Honorable Allen W. Dulles

Director, Central Intelligence
Agency


for Roger W. Jones
Assistant Director
Legislative Reference

Enclosures.

ATTN:

330 Administration Building
2430 E Street, NW

DEPARTMENT OF JUSTICE
Washington 25, D.C.

October 11, 1957

Honorable Percival F. Brundage
Director, Bureau of the Budget
Washington, D. C.

Dear Mr. Brundage:

I have caused to be prepared and am herewith presenting (1) a proposed Executive order entitled "Amendment of Executive Order No. 10501 of November 5, 1953, Relating to Safeguarding Official Information in the Interests of the Defense of the United States" and (2) a proposed memorandum to be issued by the President to supplement his memorandum of November 5, 1953, to all department and agency heads.

Pursuant to a designation from the National Security Council on October 29, 1953, the Interdepartmental Committee on Internal Security ("ICIS") has been conducting a review of the implementation of Executive Order No. 10501 to insure that classified defense information is properly safeguarded. The proposed Executive order and memorandum would effectuate three recommendations made by ICIS. The proposed Executive order would, in addition, effectuate a recommendation of the Department of State for amendment of Executive Order No. 10501. That proposal has been considered, but not acted upon, by ICIS. I understand that the Department of Defense opposes the recommendation.

The first of ICIS's recommendations relates to the declassification of classified material. As you know, section 2 of Executive Order No. 10501 limits authority to classify defense information or material to departments and agencies as specified in the order. Subparagraph (a) of that section provides that those departments and agencies having no direct responsibility for national defense shall have "no authority for original classification of information or material under this order." In his memorandum of November 5, 1953, issued contemporaneously with the execution of the order, the President enumerated twenty-eight agencies as falling under subparagraph (a) and therefore as being without further original classifying authority. Section 4 of the order, relating to the declassification, downgrading or upgrading of material, applies only to "departments or agencies originating classified material." The order has been construed as not conferring authority to declassify upon the twenty-eight agencies now falling under section 2, subparagraph (a).

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ICIS advises me that some of these agencies have in their custody a limited number of documents classified by them under Executive Order No. 10290 of September 24, 1951, the predecessor of Executive Order No. 10501, and that these documents may no longer require classification. It has requested that there be issued either an amendment to the latter order or an instruction from the President which would authorize such agencies to declassify information or material. Since what has been requested is in effect authority now believed to be withheld under an existing Executive order, I consider an amendment of the order preferable and more orderly than the issuance of a Presidential instruction. Accordingly, the proposed new Executive order would amend section 4 of Executive Order No. 10501 by adding thereto a new subparagraph as follows:

"(1) Departments and agencies which do not have authority for original classification. The provisions of this section relating to the declassification of defense material shall apply to departments or agencies which do not, under the terms of this order, have authority for original classification of material, but which have formerly classified material pursuant to Executive Order No. 10290 of September 24, 1951."

It should be noted that this amendment would merely permit declassification and would not relate either to the downgrading or upgrading of material. Such authority has not been requested, and I am advised that it is not now desired. It has been suggested that section 15 of Executive Order No. 10501 could be used to take care of the exceptional case in which an agency subject to Section 2, subparagraph (a), desires to upgrade or downgrade presently classified material. However, I should prefer to withhold my views on that question until such a case arises.

The second recommendation of ICIS which would be embodied in the proposed Executive order relates to the transmission of material labeled "Confidential." The first sentence of subparagraph (d) of section 8 of Executive Order No. 10501 now provides:

"Confidential defense material shall be transmitted within the United States by one of the means established for higher classifications, by registered mail, or by express or freight under such specific conditions as may be prescribed by the head of the department or agency concerned."

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This language does not authorize the transmission of such material by certified mail or ordinary first-class mail. ICIS advises me that it is of the opinion that a significant reduction of expenditure can be achieved by giving the sender discretion as to the use of certified or first-class mail without an appreciable compromise of security. Accordingly, the proposed new order would amend the first sentence of subparagraph (d) to read as follows:

"Confidential defense material shall be transmitted within the continental United States by one of the means established for higher classifications, by registered, certified, or first-class mail, or by express or freight under such conditions as may be prescribed by the head of the department or agency concerned."

The third recommendation of ICIS relates to additions to the list of agencies which are subject to subparagraph (a) of section 2 of Executive Order No. 10501 and therefore are without classification authority. It advises that the Farm Credit Administration has no occasion to classify information and that the Federal Coal Mine Safety Board of Review does not possess or handle any defense information or material. It has suggested that they be added to the list. Since section 2 is phrased in general terms, the enumeration of the agencies which are subject to its alternative provisions was not placed in the Executive order but in the President's memorandum of November 5, 1953. I suggest that the same procedure be followed with respect to the addition of these two agencies. The proposed supplement to that memorandum forwarded herewith would therefore add the Farm Credit Administration and the Federal Coal Mine Safety Board of Review to the enumeration of agencies in the November 5, 1953, memorandum which no longer have original classification authority.

The proposed order would also embody the Department of State's suggestion relating to accountability and dissemination. The first sentence of section 7 of Executive Order No. 10501 now provides:

"Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such access in the interest of promoting national defense and only if they have been determined to be trustworthy."

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The Department of State has proposed to amend this language to read as follows:

"Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such access in the national interest and only if they have been determined to be trustworthy."

I understand that the Department of Defense opposes the proposal. ICIS has not yet acted upon the recommendation. I believe that by including it among the proposed amendments of Executive Order No. 10501 existing differences may be resolved more expeditiously and at the appropriate level.

As I understand it, the immediate occasion for the Department of State proposal arises from consideration of an agreement between that Department, Secretary Dulles, and Princeton University relating to the "Princeton Collection of Dulles Papers." The background of that agreement arises from an attempt to accommodate the Government's interest in preserving its own archives, the security requirements for the protection of classified material, and the desire of Princeton and Mr. Dulles to place in one collection convenient for research and study documents of the phases of foreign policy which were formulated and carried out under his direction.

In brief, the agreement would provide that researchers designated by Princeton and cleared for security by the Department of State will examine the files of that department in order to select the documents which will be included in the collection. The originals will remain in the Department's files. However, duplicates will be made and be sent to Princeton where they will be held initially by the University as a repository for the Department of State and pursuant to security arrangements imposed by the department. Access to the duplicates of classified documents will be permitted by Princeton only to scholars cleared by the department under pertinent regulations issued to safeguard the security of the documents and their contents. Title to such duplicates will remain in the United States until such time as the department removes all restrictions on making the information contained therein available to the public generally.

The principal legal objection to the contemplated arrangement arises from the language of the first sentence of section 7 of Executive Order No. 10501. In view of this language and the intent

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and history of the Executive order, this department has taken the view that the words, "national defense," in the phrase "in the interest of promoting national defense", must be construed in a limited sense. They should be confined to activities directly related to the defense of the country as opposed to general welfare activities which may have only an incidental impact on national defense. Gorin v. United States, 312 U.S. 19, 28; Cole v. Young, 351 U.S. 541, 544.

Under the proposed agreement researchers designated by Princeton for the purposes of selecting the documents to be duplicated, employees of the University concerned with safeguarding them, and scholars would be given access to classified material. I understand that the Department of State believes it could make a finding that such access is in the national interest because it would encourage scholarship and the dissemination of information. However, it appears to have some difficulty in making the finding that such access would be "in the interest of promoting national defense" in the restrictive sense which this department considers the language to require. Accordingly, the Department of State has recommended the amendment of section 7 which is embodied in the proposed Executive order transmitted herewith.

It should be pointed out the suggested amendment would do more than merely affect the proposal relating to the Dulles Collection. The order now provides that access to classified defense information may be permitted only to persons "whose official duties^{1/} require" it and "only if they have been determined to be trustworthy." The requirement that knowledge or possession of classified information shall be permitted only "in the interest of promoting national defense" is an additional independent one. Accordingly, the present language appears to preclude access by trustworthy persons to defense information for purposes which would merely promote the general welfare even when access would be determined not to be likely to harm the national defense and to be for an official purpose.

^{1/} The term "official duties" has not been interpreted to preclude access by individuals who are not Government officials or employees.

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This applies equally to Government officials and employees and to private individuals. The language suggested by the Department of State would establish a test under which an agency or department head entrusted with safeguarding classified information or material could permit access to such material if he is satisfied that, in balance and including appropriate consideration of the interest of national defense, the general welfare or national interest is likely to be served if access is authorized.

This department has originated the proposed Executive order so as to present the policy questions involved. If, as a result of resolution of those questions, it should be decided to issue the order, I should appreciate an opportunity again to review it as to form and legality.

Sincerely,

Attorney General

EXECUTIVE ORDER

AMENDMENT OF EXECUTIVE ORDER NO. 10501 OF
NOVEMBER 5, 1953, RELATING TO SAFEGUARDING
OFFICIAL INFORMATION IN THE INTERESTS OF THE
DEFENSE OF THE UNITED STATES

By virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

Executive Order No. 10501 of November 5, 1953, relating to safeguarding official information in the interests of the defense of the United States, is hereby amended as follows:

1. Section 4 is amended by adding a new subparagraph at the end thereof, as follows:

"(1) Departments and agencies which do not have authority for original classification. The provisions of this section relating to the declassification of defense material shall apply to departments or agencies which do not, under the terms of this order, have authority for original classification of material, but which have formerly classified material pursuant to Executive Order No. 10290 of September 24, 1951."

2. The first sentence of section 7 is amended to read as follows:

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"Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such access in the national interest and only if they have been determined to be trustworthy."

3. The first sentence of subparagraph (d) of section 8 is amended to read as follows:

"Confidential defense material shall be transmitted within the continental United States by one of the means established for higher classifications, by registered, certified or first-class mail, or by express or freight under such conditions as may be prescribed by the head of the department or agency concerned."

THE WHITE HOUSE

, 1957.

Memorandum for the Heads of all Departments
and Agencies of the Government

My memorandum to you of November 5, 1953, relating to Executive Order No. 10501 of the same date is supplemented by adding to the enumeration of departments and agencies under the heading "Original Classification Authority Eliminated" the following agencies:

- 29. Farm Credit Administration
- 30. Federal Coal Mine Safety
Board of Review

THE WHITE HOUSE,

, 1957.